IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES SMALL BUSINESS ADMINISTRATION in its capacity as Receiver for ROCKET VENTURES II SBIC, L.P.,

Plaintiffs,

v.

ROCKET VENTURES II, L.P., et al.,

Defendants.

Case No.: C-10-04425 JSW

REPORT AND RECOMMENDATION RE APPLICATIONS FOR DEFAULT JUDGMENT

Dkt. Nos. 126-133, 139-140

I. INTRODUCTION

In this breach of contract action, Plaintiff United States Small Business Administration ("SBA" or "Plaintiff"), in its capacity as Receiver for Rocket Ventures II SBIC, L.P. ("Rocket Ventures"), applies for default judgment against Defendants Alistair Anderson Donald ("Donald"), Luca Casiraghi ("Casiraghi"), Fred Cucchi ("Cucchi"), Tyna Development c/o Fiderservice SA ("Tyna"), Alberto Gandini ("Gandini"), David Mather ("Mather"), Rijete PTY, Ltd. c/o Brian Wilson ("Rijete"), ValorLife, Hahei, Ltd. c/o Allan Cockell ("Hahei"), and Christopher Stainton ("Stainton") (collectively "Defendants").[1] Plaintiff's unopposed Motions for Default Judgment were referred to the undersigned for a Report and Recommendation. A hearing on the motions was held on March 15, 2013 at 9:30 am. After a continuance, a second hearing was scheduled for April 19, 2013 at 9:30 am.[2] The Court finds that the motions are appropriate for decision without additional oral argument.

[1] There are a number of other defendants in this action. Plaintiff moves for default judgment only against these Defendants.

[2] The continuance was granted to provide Plaintiff an opportunity to reach a settlement with the defendants that have appeared in this action.

Accordingly, the hearing scheduled for April 19, 2013 at 9:30 am is vacated. For the reasons set out below, the Court RECOMMENDS that the Motions for Default Judgment to be DENIED WITHOUT PREJUDICE.

II. BACKGROUND

A. The Amended Complaint

Plaintiff filed its initial Complaint in this action alleging breach of contract claims against Rocket Ventures II, L.P. ("RVII"), Rocket Ventures II CEO Fund, L.P. ("CEO Fund"), and Rocket Ventures SBIC Partners, LLC ("SBIC Partners") on September 30, 2010. Complaint, ¶¶ 30-47. On January 18, 2012, Plaintiff filed its Amended Complaint ("FAC"). Dkt. No. 29. In the FAC, Plaintiffs allege that RVII and CEO Fund are comprised of "Class B Limited Partners." FAC, ¶ 7. According to Plaintiff, Defendants are Class B Limited Partners of RVII, CEO Fund, or both. *Id*. at ¶¶ 15, 24-29, 32, 42-43, 47.[3]

Plaintiff alleges that it is authorized by statute to license Small Business Investment Companies ("SBICs") to provide capital to qualified small business concerns. *Id*. at ¶ 50. Plaintiff states that the statute authorizes it to prescribe regulations governing operations of the SBICs, which it has exercised by promulgating the regulations reported in Part 107 of Title 13 of the Code of Federal Regulations. *Id*. (citing 15 U.S.C. § 687(c)). Plaintiff alleges that it is pursuing and preserving all of Rocket Ventures' claims pursuant to a Consent Order of Receivership in the "Receivership Action"[4] and consistent with the governing statutes and regulations. *Id*. at ¶ 51, Ex. A.

Plaintiff alleges the factual background as follows. Rocket Ventures was formed for the purpose of operating as a venture capital fund licensed as a SBIC. *Id*. at ¶ 52. Rocket Ventures held U.S. Small Business Administration Small Business Investment Company License No. 0979-0435 at all relevant times. *Id*. SBIC Partners was Rocket Ventures' managing general partner. *Id*. at ¶ 53. SBIC Partners' had exclusive control of Rocket Ventures' management and operations, within the

[3] In its papers, Plaintiff is inconsistent as to Donald's name. Plaintiff alleges (1) "Alistar Anderson Donald" is a Class B Limited Partner of RVII; and (2) "Donald Alistar Anderson" is a Class B Limited Partner of CEO Fund. FAC, ¶¶ 15, 42. Plaintiff pleads two counts of breach of contract against "Alistair Anderson Donald." FAC, ¶¶ 192-205, 542-555. The Motion for Default Judgment and supporting declarations refer to "Alistair Anderson Donald." But the supporting exhibit refers to "Alistar Anderson Donald." Declaration of Richard Moser in Support of Application for Default Judgment Against Defendant Alistair Anderson Donald, Ex. A.

[4] This refers to related proceedings found at *United States of America v. Rocket Ventures II SBIC, L.P.*, C-08-02240 JSW.

limitations of the governing statutes and regulations. *Id.* RVII and CEO Fund were Rocket Ventures' private limited partners. *Id.* at ¶ 54.

SBIC Partners, RVII, and CEO Fund each entered into the Rocket Ventures Limited Partnership Agreement ("Partnership Agreement") in late 2000. *Id.* at ¶ 55, Ex. B. Under the terms of the Partnership Agreement: (1) SBIC Partners agreed to be general partner of Rocket Ventures, acknowledged and agreed to be bound by the terms of the agreement, and agreed to a capital commitment of $100,000; (2) RVII agreed to be a limited partner of Rocket Ventures, acknowledged and agreed to be bound by the terms of the agreement, and agreed to a capital commitment of $25,730,900; and (3) CEO Fund agreed to be a limited partner of Rocket Ventures, acknowledged and agreed to be bound by the terms of the agreement, and agreed to a capital commitment of $443,500. *Id.* at ¶¶ 56-58. RVII and CEO Fund are "Class A Limited Partners." *Id.* at ¶ 64 n.2.

Rocket Ventures was structured as a "drop down" SBIC fund. *Id.* at ¶ 59. This means that Rocket Ventures' limited partners, RVII and CEO Fund, were to raise capital from their investors (limited partners), and in turn drop down some or all of the capital raised into the SBIC Fund. *Id.* A Capital Certificate submitted to the SBA and certified by Rocket Ventures' then-management identified the individuals and entities that invested in Rocket Ventures' limited partners, RVII and CEO Fund. *Id.* at ¶ 60. These individuals and entities are known as "Class B Limited Partners." *Id.*

Article 5 of the Partnership Agreement governs "Partners' Capital Contributions." *Id.* at ¶ 61, Ex. B. Pursuant to the agreement, "[a]ll capital contributions to the Partnership by [the General Partner and Private Limited Partners] must be in cash, except as provided in this agreement and approved by the SBA." *Id.* at ¶¶ 62, 63 (quoting Partnership Agreement §§ 5.02(a), 5.04). The Partnership Agreement further provides that "[i]f at any time the Class A Limited Partner fails to make a Capital Contribution as required by this Agreement, then the Class B Limited Partners shall contribute to the capital of the Partnership in cash in an amount equal to the Class A Limited Partner's Capital Contribution then in default, with each such Class B Limited Partner being required to contribute its Proportionate Share of the Capital Contribution then in default, provided, however, that the obligation of each Class B Limited Partner to contribute to the capital of the Partnership shall be several, and not joint, and in no event shall any Class B Limited Partner be required to contribute to

the Partnership in an amount greater than the then unpaid amount that such Class B Limited Partner has agreed to contribute to the capital of the Class A Limited Partner." *Id*. at ¶ 64 (quoting Partnership Agreement § 5.02(c)). Pursuant to the Capital Certificates, former management was aware that all Class B Limited Partners were required to execute the Partnership Agreement. *Id*. at ¶ 65.

Rocket Ventures' books and records reflect that RVII failed to make its required capital commitment. *Id*. at ¶¶ 66, 79. As a result, RVII owes a balance of $9,690,144, plus recoverable interest, the amount of its unfunded capital commitment. *Id*. at ¶¶ 66, 80. Rocket Ventures' books and records reflect that CEO Fund failed to make its required capital commitment. *Id*. at ¶¶ 67, 85. As a result, RVII owes a balance of $167,640, plus recoverable interest, the amount of its unfunded capital commitment. *Id*. at ¶¶ 67, 86. The Partnership Agreement provides that, where the partnership is liquidated, the general and limited partners must make any unfunded capital commitments if the assets of the partnership are insufficient to repay the partnership obligations owed to the SBA. *Id*. at ¶ 69 (citing Partnership Agreement § 5.06). "The Partnership is entitled to enforce the obligations of each Partner to make contributions to capital specified in [the Partnership Agreement]. The Partnership has all rights and remedies available at law or equity if any such contribution is not so made." *Id*. at ¶ 70 (quoting Partnership Agreement § 5.07(a)). The Partnership Agreement also provides that the general partner may commence legal proceedings against any defaulting partner to collect due and unpaid capital commitments, including interest and attorneys' fees. *Id*. at ¶ 71 (citing Partnership Agreement § 5.07(a)(ii)(D)).

Plaintiff demanded payment of the unfunded capital commitment from the Class A Limited Partners, and, not receiving payment, issued default notices. *Id*. at ¶¶ 72-73, Ex. C. Only RVII made any payment in response to the default notice, and even after payment the shortfall listed above remained. *Id*. at ¶ 66, 72. On September 2, 2010, the court in the receivership action entered an order authorizing Plaintiff to commence this action. *Id*. at ¶ 75, Ex. D.

Plaintiff alleges twelve breach of contract causes of action that are relevant to the present Motions, as follows:

(1) Breach of Contract Against Donald, Count 1: Rocket Ventures' books and records reflect that Donald executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 193. The books and records also reflect that, around that time, Donald executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 194. Further, the books and records reflect that Donald executed a Consent of Limited Partners of Rocket Ventures II, L.P. ("Consent") on or around April 30, 2001. *Id*. at ¶ 195. In the Consent, Donald consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Donald and referenced in the Consent. *Id*. at ¶ 196.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Donald's conduct. *Id*. at ¶ 197. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 198. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Donald, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 15, 199.

On October 21, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Donald pay the full amount of his remaining unfunded capital commitment, then $62,500, by November 30, 2011. *Id*. at ¶ 200. Donald did not do so. *Id*. On December 5, 2011, Plaintiff notified Donald that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 201. He did not do so. *Id*. As a result, Donald breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, $62,500, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 202-205.

(2) Breach of Contract Against Donald, Count 2: The allegations against Donald in the second count for breach of contract are similar to those in the first count. The allegations only differ in that they are predicated on Donald's Class B Limited Partnership in CEO Fund, as opposed to

RVII. *Id*. at ¶¶ 42, 543-545. In this count, Plaintiff seeks to recover Donald's unfunded capital commitment to CEO Fund, $3,840, plus interest, attorneys' fees, and costs. *Id*. at ¶¶ 553-555.

(3) Breach of Contract Against Cucchi: Rocket Ventures' books and records reflect that Cucchi executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 319. The books and records also reflect that, around that time, Cucchi executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 320. Further, the books and records reflect that Cucchi executed the Consent on or around April 30, 2001. *Id*. at ¶ 321. In the Consent, Cucchi consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Cucchi and referenced in the Consent. *Id*. at ¶ 322.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Cucchi's conduct. *Id*. at ¶ 323. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 324. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Cucchi, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 24, 325.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Cucchi pay the full amount of his remaining unfunded capital commitment, then $98,360, by August 31, 2011. *Id*. at ¶ 326. Cucchi did not do so. *Id*. On November 10, 2011, Plaintiff notified Cucchi that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 327. He did not do so. *Id*. As a result, Cucchi breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, now $75,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 328-331.

(4) Breach of Contract Against ValorLife: Rocket Ventures' books and records reflect that ValorLife executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 333. The books and records also reflect that, around that time, ValorLife executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 334. Further, the books and records reflect that

ValorLife executed the Consent on or around April 30, 2001. *Id*. at ¶ 335. In the Consent, ValorLife consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to ValorLife and referenced in the Consent. *Id*. at ¶ 336.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by ValorLife's conduct. *Id*. at ¶ 337. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 338. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including ValorLife, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 25, 339.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded ValorLife pay the full amount of his remaining unfunded capital commitment, then $445,519.50, by August 31, 2011. *Id*. at ¶ 340. ValorLife did not do so. *Id*. On November 10, 2011, Plaintiff notified ValorLife that it was in default and gave it three business days from the date of that notice to make payment in full. *Id*. at ¶ 341. ValorLife did not do so. *Id*. As a result, ValorLife breached the Partnership Agreement and is liable for its remaining share of the unfunded capital commitment, now $339,800, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 342-346.

(5) Breach of Contract Against Gandini: Rocket Ventures' books and records reflect that Gandini executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 347. The books and records also reflect that, around that time, Gandini executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 348. Further, the books and records reflect that Gandini executed the Consent on or around April 30, 2001. *Id*. at ¶ 349. In the Consent, Gandini consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Gandini and referenced in the Consent. *Id*. at ¶ 350.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Gandini's conduct. *Id*. at ¶ 351. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 352. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Gandini, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 26, 353.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Gandini pay the full amount of his remaining unfunded capital commitment, then $148,511.50, by August 31, 2011. *Id*. at ¶ 354. Gandini did not do so. *Id*. On November 10, 2011, Plaintiff notified Gandini that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 355. He did not do so. *Id*. As a result, Gandini breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, $148,511, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 356-359.

(6) Breach of Contract Against Rijete, Count 1: Rocket Ventures' books and records reflect that Rijete executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 361. The books and records also reflect that, around that time, Rijete executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 362. Further, the books and records reflect that Rijete executed the Consent on or around April 30, 2001. *Id*. at ¶ 363. In the Consent, Rijete consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Rijete and referenced in the Consent. *Id*. at ¶ 364.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Rijete's conduct. *Id*. at ¶ 365. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 366. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Rijete, are each

liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 27, 367.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Rijete pay the full amount of its remaining unfunded capital commitment, then $60,137, by August 31, 2011. *Id*. at ¶ 368. Rijete did not do so. *Id*. On November 10, 2011, Plaintiff notified Rijete that it was in default and gave it three business days from the date of that notice to make payment in full. *Id*. at ¶ 369. It did not do so. *Id*. As a result, Rijete breached the Partnership Agreement and is liable for its remaining share of the unfunded capital commitment, now $38,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 370-373.

(7) Breach of Contract Against Rijete, Count 2: The allegations against Rijete in the second count for breach of contract are similar to those in the first count. The allegations only differ (1) in that they are predicated on Rijete's Class B Limited Partnership in CEO Fund, as opposed to RVII; and (2) in that the time Rijete was given to respond to the initial demand for payment ran from August 26, 2011 to August 30, 2011. *Id*. at ¶¶ 47, 627-629. In this count, Plaintiff seeks to recover Rijete's unfunded capital commitment to CEO Fund, $7,515, plus interest, attorneys' fees, and costs. *Id*. at ¶¶ 637-639.

(8) Breach of Contract Against Stainton: Rocket Ventures' books and records reflect that Stainton executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 375. The books and records also reflect that, around that time, Stainton executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 376. Further, the books and records reflect that Stainton executed the Consent on or around April 30, 2001. *Id*. at ¶ 377. In the Consent, Stainton consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Stainton and referenced in the Consent. *Id*. at ¶ 378.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Stainton's conduct. *Id*. at ¶ 379. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 380. Even so, RVII and CEO Fund failed to make

payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Stainton, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 28, 381.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Stainton pay the full amount of his remaining unfunded capital commitment, then $30,000, by August 31, 2011. *Id*. at ¶ 382. Stainton did not do so. *Id*. On December 5, 2011, Plaintiff notified Stainton that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 383. He did not do so. *Id*. As a result, Stainton breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, now $25,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 384-387.

(9) Breach of Contract Against Tyna: Rocket Ventures' books and records reflect that Tyna executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id*. at ¶ 389. The books and records also reflect that, around that time, Tyna executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 390. Further, the books and records reflect that Tyna executed the Consent on or around April 30, 2001. *Id*. at ¶ 391. In the Consent, Tyna consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Tyna and referenced in the Consent. *Id*. at ¶ 392.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Tyna's conduct. *Id*. at ¶ 393. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 394. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Tyna, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 29, 395.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Tyna pay the full amount of his remaining unfunded capital commitment, then $150,085, by August 31, 2011. *Id*. at ¶ 396. Tyna did not do so. *Id*. On November 10, 2011, Plaintiff notified Tyna that it

was in default and gave it three business days from the date of that notice to make payment in full. *Id.* at ¶ 397. It did not do so. *Id.* As a result, Tyna breached the Partnership Agreement and is liable for its remaining share of the unfunded capital commitment, now $125,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id.* at ¶¶ 398-401.

(10) Breach of Contract Against Hahei: Rocket Ventures' books and records reflect that Hahei executed a Subscription Agreement and became a limited partner in RVII in or around May 2000. *Id.* at ¶ 431. The books and records also reflect that, around that time, Hahei executed the Limited Partnership Agreement of RVII. *Id.* at ¶ 432. Further, the books and records reflect that Donald executed the Consent on or around April 30, 2001. *Id.* at ¶ 433. In the Consent, Hahei consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id.* The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Hahei and referenced in the Consent. *Id.* at ¶ 434.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Hahei's conduct. *Id.* at ¶ 435. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id.* at ¶ 436. Even so, RVII and CEO Fund failed to make payment in full. *Id.* As a result of this failure, the individual Class B Limited Partners, including Hahei, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id.* at ¶¶ 32, 437.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Hahei pay the full amount of his remaining unfunded capital commitment, then $300,000, by August 31, 2011. *Id.* at ¶ 438. Hahei did not do so. *Id.* On November 10, 2011, Plaintiff notified Hahei that it was in default and gave it three business days from the date of that notice to make payment in full. *Id.* at ¶ 439. Hahei did not do so. *Id.* As a result, Hahei breached the Partnership Agreement and is liable for its remaining share of the unfunded capital commitment, $300,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id.* at ¶¶ 440-443.

(11) Breach of Contract Against Casiraghi: Rocket Ventures' books and records reflect that Casiraghi executed a Subscription Agreement and became a limited partner in RVII in or around May

2000. *Id*. at ¶ 529. The books and records also reflect that, around that time, Casiraghi executed the Limited Partnership Agreement of RVII. *Id*. at ¶ 530. Further, the books and records reflect that Casiraghi executed the Consent on or around April 30, 2001. *Id*. at ¶ 531. In the Consent, Casiraghi consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement, in a form substantially similar or identical to its present form, was submitted to Casiraghi and referenced in the Consent. *Id*. at ¶ 532.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Casiraghi's conduct. *Id*. at ¶ 533. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 534. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Casiraghi, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 40, 535.

On June 26, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Casiraghi pay the full amount of his remaining unfunded capital commitment, then $150,000, by August 31, 2011. *Id*. at ¶ 536. Casiraghi did not do so. *Id*. On November 10, 2011, Plaintiff notified Casiraghi that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 537. He did not do so. *Id*. As a result, Casiraghi breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, $150,000, plus interest and attorneys' fees and costs recoverable pursuant to the Partnership Agreement. *Id*. at ¶¶ 538-541.

(12) Breach of Contract Against Mather: Rocket Ventures' books and records reflect that Mather executed a Subscription Agreement and became a limited partner in CEO Fund in or around May 2000. *Id*. at ¶ 571. The books and records also reflect that, around that time, Mather executed the Limited Partnership Agreement of CEO Fund. *Id*. at ¶ 572. Further, the books and records reflect that Mather executed a Consent of Limited Partners of Rocket Ventures II CEO Fund, L.P. ("Consent") on or around April 30, 2001. *Id*. at ¶ 573. In the Consent, Mather consented to becoming a Conditional Class B Private Limited Partner of Rocket Ventures. *Id*. The Partnership Agreement,

in a form substantially similar or identical to its present form, was submitted to Mather and referenced in the Consent. *Id*. at ¶ 574.

Plaintiff and Rocket Ventures performed as required under the Partnership Agreement, except where prevented or excused by Mather's conduct. *Id*. at ¶ 575. Pursuant to the Partnership Agreement, Plaintiff demanded payment of the unfunded capital commitment from Rocket Ventures' limited partners, RVII and CEO Fund. *Id*. at ¶ 576. Even so, RVII and CEO Fund failed to make payment in full. *Id*. As a result of this failure, the individual Class B Limited Partners, including Mather, are each liable for their proportionate share of the unfunded capital commitment in accordance with section 5.02(c) of the Partnership Agreement. *Id*. at ¶¶ 43, 577.

On October 21, 2011, in accordance with the Partnership Agreement, Plaintiff demanded Mather pay the full amount of his remaining unfunded capital commitment, then $15,000, by November 30, 2011. *Id*. at ¶ 578. Mather did not do so. *Id*. On December 5, 2011, Plaintiff notified Mather that he was in default and gave him three business days from the date of that notice to make payment in full. *Id*. at ¶ 579. He did not do so. *Id*. As a result, Mather breached the Partnership Agreement and is liable for his remaining share of the unfunded capital commitment, $15,000, plus interest and attorneys' fees and costs recoverable pursuant to the partnership agreement. *Id*. at ¶¶ 580-583.

B. Motions for Default Judgment

1. Donald

Plaintiff states that the clerk entered default as to Donald on August 23, 2012. Application For Entry of Default Judgment Against Alistair Anderson Donald, 2 (citing Dkt. No. 104). Plaintiff asserts that (1) Donald has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Donald; (3) notice of this application for default judgment was served on Donald on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Donald on two counts of breach of contract for a combined principal amount of $66,430 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2-3. Plaintiff contends that entry of default against one or more, but fewer than all,

parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3-4 (citing Fed. R. Civ. P. 54(b); *Westinghouse Elec. Corp. v. Rio Algom Ltd. (In re Uranium Antitrust Litig.)*, 617 F.2d 1248, 1257 (7th Cir. 1980)).

Plaintiff submits two declarations in support of its motion. Plaintiff's attorney, Melissa S. Lor ("Lor"), declares that Plaintiff filed a request for entry of Default against Donald on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Alistair Anderson Donald, ¶ 4 (citing Dkt. No. 95). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Donald is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Second, Richard Moser ("Moser") submits a declaration based on his work, from September 2008 to August 2010, at Phoenix Management, Plaintiff's Principal Agent, and his review of Rocket Ventures' business books and records. Moser Declaration in Support of Entry of Default Judgment Against Alistair Anderson Donald, ¶¶ 1-3. Moser provides a spreadsheet containing the principal amount in default by each Defendant on each count, the date of that default, the interest rate, the interest that accrued on the principal amount in default up to December 15, 2012, the total default including interest as of December 15, 2012, and the daily interest accrual at a 4% plus prime (3.25%) interest rate. *Id*. at ¶¶ 4-6, Ex. A. Moser declares that Donald was in default for the amount of $71,350.05 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

2. Cucchi

Plaintiff states that the clerk entered default as to Cucchi on August 23, 2012. Application For Entry of Default Judgment Against Fred Cucchi, 2 (citing Dkt. No. 103). Plaintiff asserts that (1) Cucchi has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Cucchi; (3) notice of this application for default judgment was served on Cucchi on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Cucchi principal amount of $75,000 plus prejudgment and

post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of its motion. Lor declares that Plaintiff filed a request for entry of Default against Cucchi on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Fred Cucchi, ¶ 4 (citing Dkt. No. 96). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Cucchi is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Fred Cucchi, ¶¶ 1-6, Ex. A. Moser declares that Cucchi was in default for the amount of $82,023.44 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

3. ValorLife

Plaintiff states that the clerk entered default as to ValorLife on August 23, 2012. Application For Entry of Default Judgment Against ValorLife, 2 (citing Dkt. No. 103). Plaintiff asserts that (1) ValorLife has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with ValorLife; (3) notice of this application for default judgment was served on ValorLife on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against ValorLife principal amount of $339,800 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of its motion. Lor declares that Plaintiff filed a request for entry of Default against ValorLife on August 17, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against ValorLife, ¶ 4 (citing Dkt. No. 94). Lor declares that default was entered six days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that ValorLife is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against ValorLife, ¶¶ 1-6, Ex. A. Moser declares that ValorLife was in default for the amount of $371,620.85 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

4. Gandini

Plaintiff states that the clerk entered default as to Gandini on August 23, 2012. Application For Entry of Default Judgment Against Alberto Gandini, 2 (citing Dkt. No. 103). Plaintiff asserts that (1) Gandini has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Gandini; (3) notice of this application for default judgment was served on Gandini on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Gandini principal amount of $148,511 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Gandini on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Alberto Gandini, ¶ 4 (citing Dkt. No. 97). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the

above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Gandini is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Alberto Gandini, ¶¶ 1-6, Ex. A. Moser declares that Gandini was in default for the amount of $162,418.44 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

5. Rijete

Plaintiff states that the clerk entered default as to Rijete on August 23, 2012. Application For Entry of Default Judgment Against Rijete PTY, Ltd., 2 (citing Dkt. No. 104). Plaintiff asserts that (1) Rijete has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Rijete; (3) notice of this application for default judgment was served on Rijete on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment on both counts against Rijete in a combined principal amount of $45,515 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2-3. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3-4 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Rijete on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Rijete PTY, Ltd., ¶ 4 (citing Dkt. No. 99). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Rijete is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Rijete PTY, Ltd., ¶¶ 1-6, Ex. A. Moser declares that Rijete was in default for the amount of $49,777.29 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

6. Stainton

Plaintiff states that the clerk entered default as to Stainton on December 21, 2012. Application For Entry of Default Judgment Against Christopher Stainton, 2 (citing Dkt. No. 123). Plaintiff asserts that (1) Stainton has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Stainton; (3) notice of this application for default judgment was served on Stainton on January 22, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Stainton principal amount of $30,000 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Stainton on December 19, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Christopher Stainton, ¶ 4 (citing Dkt. No. 119). Lor declares that default was entered two days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Stainton is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Christopher Stainton, ¶¶ 1-6, Ex. A. Moser declares that Stainton was in default for the amount of $32,809.38 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

7. Tyna

Plaintiff states that the clerk entered default as to Tyna on August 23, 2012. Application For Entry of Default Judgment Against Tyna Development, 2 (citing Dkt. No. 103). Plaintiff asserts that (1) Tyna has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Tyna; (3) notice of this application for default judgment was served on Tyna on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Tyna principal amount of $125,000 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Tyna on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Tyna Development, ¶ 4 (citing Dkt. No. 98). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Tyna is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Tyna Development, ¶¶ 1-6, Ex. A. Moser declares that Tyna was in default for the amount of $136,705.73 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

8. Hahei

Plaintiff states that the clerk entered default as to Hahei on December 27, 2012. Application For Entry of Default Judgment Against Hahei, Ltd., 2 (citing Dkt. No. 124). Plaintiff asserts that (1) Hahei has not formally appeared in this action; (2) counsel for Plaintiff has not had any

contact with Hahei; (3) notice of this application for default judgment was served on Hahei on January 22, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Hahei principal amount of $300,000 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Hahei on December 19, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Hahei, Ltd., ¶ 4 (citing Dkt. No. 122). Lor declares that default was entered eight days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Gandini is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Hahei, Ltd., ¶¶ 1-6, Ex. A. Moser declares that Hahei was in default for the amount of $328,093.75 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

9. Casiraghi

Plaintiff states that the clerk entered default as to Casiraghi on August 23, 2012. Application For Entry of Default Judgment Against Luca Casiraghi, 2 (citing Dkt. No. 104). Plaintiff asserts that (1) Casiraghi has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Casiraghi; (3) notice of this application for default judgment was served on Casiraghi on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Casiraghi principal amount of $150,000 plus prejudgment and

post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Casiraghi on August 20, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against Luca Casiraghi, ¶ 4 (citing Dkt. No. 100). Lor declares that default was entered three days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Casiraghi is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against Luca Casiraghi, ¶¶ 1-6, Ex. A. Moser declares that Casiraghi was in default for the amount of $164,046.88 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

10. Mather

Plaintiff states that the clerk entered default as to Mather on August 23, 2012. Application For Entry of Default Judgment Against David Mather, 2 (citing Dkt. No. 103). Plaintiff asserts that (1) Mather has not formally appeared in this action; (2) counsel for Plaintiff has not had any contact with Mather; (3) notice of this application for default judgment was served on Mather on January 4, 2013 in c/o Designated Agent of Rocket Ventures II, L.P. and/or Rocket Management II, LLC, in c/o Gordon C. Atkinson, 101 California Street, 5th Floor, San Francisco, CA 94111-58080; and (4) Plaintiff is entitled to judgment against Gandini principal amount of $15,000 plus prejudgment and post-judgment interest, attorneys' fees, and costs. *Id*. at 2. Plaintiff contends that entry of default against one or more, but fewer than all, parties is appropriate here because each Defendant's liability is several and independent. *Id*. at 3 (citing Fed. R. Civ. P. 54(b); *In re Uranium Antitrust Litig.*, 617 F.2d at 1257).

Plaintiff submits declarations from Lor and Moser in support of their motion. Lor declares that Plaintiff filed a request for entry of Default against Mather on August 17, 2012. Declaration of Melissa S. Lor in Support of Application for Default Judgment Against David Mather, ¶ 4 (citing Dkt. No. 97). Lor declares that default was entered six days later. *Id*. at ¶ 5. Lor declares that the above-described service was made at her direction. *Id*. at ¶ 6. Lor declares that, if appropriate, Plaintiff will file a request for reasonable attorneys' fees within fourteen days of entry of judgment. *Id*. at ¶ 7. Lor declares that Mather is not a minor or incompetent person and the Service Members Civil Relief Act does not apply. *Id*. at ¶ 8.

Moser submits a declaration that is substantially the same as the one described above, with an identical Exhibit A. Moser Declaration in Support of Entry of Default Judgment Against David Mather, ¶¶ 1-6, Ex. A. Moser declares that Mather was in default for the amount of $16,132.81 as of December 15, 2012, not including attorneys' fees or costs. *Id*. at ¶ 6.

C. Supplemental Brief

After the continuance, Plaintiff filed a Supplemental Brief in Support of Applications for Default Judgment ("Supplemental Brief") arguing (1) that Plaintiff has satisfied the procedural requirements for entry of default judgment; (2) that the factors set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) weigh in favor of granting default judgment; and (3) restating its argument that there is no just reason for delay in entry of default judgment against Defendants because their liability is several and independent of each other. Supplemental Brief, 3-7.

III. ANALYSIS

A. Adequacy of Service of Process

As a preliminary matter, where default judgment is requested, the Court must determine whether service of process was adequate. *Bank of the West v. RMA Lumber Inc.*, 2008 WL 2474650, at *2 (N.D. Cal. June 17, 2008). "Unless federal law provides otherwise, an individual … may be served in a judicial district of the United States by … delivering a copy of each to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(2)(C). "Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation or a partnership or other unincorporated association that is subject to suit under a common name, must

be served … in a judicial district of the United States … by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy to each of the defendant." Fed. R. Civ. P. 4(h)(1)(B) (alternative methods of service omitted). Defendants, both individuals and business entities, were served with the FAC, issued summons, and served with each Motion for Default Judgment through their "Designated Agent Rocket Ventures II, L.P. and/or Rocket Management II, LLC c/o Gordon C. Atkinson, 101 California Street, 5th Floor[,] San Francisco, CA 94111-5800." *See* Dkt. Nos. 30-31, 134, 139-140. Service was adequate.

B. Entry of Default Judgment

Plaintiff has applied for a default judgment in this action on the basis that Defendants have failed to plead or otherwise defend or appear after valid service. Pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, the court may enter a default judgment where the clerk, under Rule 55(a), has previously entered the party's default based upon failure to plead or otherwise defend the action. Fed. R. Civ. Proc. 55(b). Once a party's default has been entered, the factual allegations of the complaint, except those concerning damages, are deemed true. Fed. R. Civ. Proc. 8(b)(6); see also *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (stating the general rule that "upon default[,] the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true"). A defendant's default, however, does not automatically entitle the plaintiff to a court-ordered default judgment. *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986).

"When an action presents more than one claim for relief … or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. Proc. 54(b). The Supreme Court has cautioned that in certain circumstances, the court should not enter a default judgment against a defendant that is, or is likely to be, inconsistent with a judgment on the merits as to the remaining defendants. *Frow v. De La Vega*, 82 U.S. 552, 554 21 L.Ed. 60 (1872). *Frow* stands for the proposition that "when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been

adjudicated with regard to all defendants, or all defendants have defaulted." 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 2690 (3d ed. 2001). *Frow* has been applied to situations beyond the joint liability context to claims where a default judgment against one defendant would be inherently inconsistent with a judgment entered against a similarly situated co-defendant. *In re First T.D. & Inv., Inc.*, 253 F.3d 520, 531-33 (9th Cir. 2001) (explicitly applying the principle in *Frow* in the absence of joint liability to conclude that the bankruptcy court abused its discretion in granting default judgment against defaulting defendants on the basis of a legal theory that it rejected at summary judgment as to the answering defendants).

In *In re Uranium Antitrust Litigation*, cited by Plaintiff, the Seventh Circuit declined to extend *Frow* to a claim involving "joint and several liability" where "a finding of liability as to one defendant is consistent with a finding of no liability as to the others, so long as there is no relationship between the parties requiring vicarious liability." *In re Uranium Antitrust Litigation*, 617 F.2d at 1257-58. The court found that "there is little possibility of inconsistent adjudications of liability" and explained that "[t]he result in *Frow* was clearly mandated by the Court's desire to avoid logically inconsistent adjudications as to liability. However, when different results as to different parties are not logically inconsistent or contradictory, the rationale for the *Frow* rule is lacking. Such is this case involving joint and several liability." *Id.*

As one court explained, *Frow*'s applicability turns "on the key question of whether under the theory of the complaint, liability of all the defendants must be uniform. Where *Frow* applies, it would be an abuse of discretion to enter a default judgment against some but not all defendants prior to adjudication of the claims against answering defendants." *Shanghai Automation Instr. Co. v. Kuei*, 194 F.Supp.2d 995, 1008 (N.D. Cal. 2001) (citations omitted).

In the present case, there is a risk of inconsistent judgments. First, the Class A Limited Partner defendants, RVII and CEO Fund, have answered and remain in the case. The Defendants subject to this motion are all Class B Limited Partners, whose liability for breach of contract is predicated on failure by the Class A Limited Partners to make their required capital contributions. *See* FAC, Ex. B § 5.02. In their Answer, the RVII and CEO Fund both denied Plaintiff's allegations as to their failure to make their required capital contributions. Amended Answer to Amended Complaint

for Breach of Contract by CEO Fund, RVII, and SBIC Partners (Dkt. No. 53), ¶¶ 66-67, 79-80, 85-86. Plaintiff has put forward no argument that a finding of liability against the Defendants herein can be sustained if RVII and CEO Fund are ultimately found not liable. Plaintiff asserts that entry of default against Defendants is appropriate because each defendant separately breached the contract. But the defaulting defendants' performance was not triggered absent breach by RVII and CEO Fund, who remain in the case. Plaintiff's argument must be rejected.

Second, several Class B Limited Partners have answered and remain in the case. Although the answering Class B Limited Partners may raise purely individual defenses, such as defects in contract formation, they may also raise defenses as to whether the contractual obligations of all Class B Limited Partners were triggered. A finding of non-liability on one of the latter defenses would be necessarily apply to all Class B Limited Partners, including Defendants in this motion.

Accordingly, under these circumstances, the Court concludes that there is "just reason for delay" of entry of judgment as to each Defendant in the present Motions under Rule 54(b). The Court RECOMMENDS that Plaintiff's Motions for Default Judgment be DENIED WITHOUT PREJUDICE to renewal at the conclusion of the case on the merits.

IV. CONCLUSION

For the reasons stated above, the Court RECOMMENDS that the Motions for Default Judgment be DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: April 16, 2013

JOSEPH C. SPERO
United States Magistrate Judge

United States District Court
Northern District of California